



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 3, 2011

CBCA 1985-RELO

In the Matter of ROY L. EDGAR

Roy L. Edgar, APO Area Europe, Claimant.

Colonel Eric A. Beene, Commander, 39th Air Base Wing (USAFE), Department of the Air Force, APO Area Europe, appearing for Department of the Air Force.

POLLACK, Board Judge.

Roy Edgar, an employee of the Department of the Air Force (AF), seeks payment from the AF for separate maintenance allowance (SMA) and back pay; or alternatively, for release from his one year commitment in Turkey (as well as return rights to his previous position). An SMA is an allowance provided to an employee to assist the employee to meet the additional expenses of maintaining family members elsewhere than at the employee's foreign post of assignment.

In this matter, Mr. Edgar was offered a one year tour in Turkey, which he ultimately accepted. Primarily due to family commitments, his wife did not go with him. Prior to accepting the position, Mr. Edgar sought assurances from the AF regarding whether he could be paid an SMA. It is undisputed that while the AF made no binding commitment as to providing an SMA, Mr. Edgar was given the impression that once he got to Turkey, the request for SMA would be supported. Soon after arriving in Turkey, Mr. Edgar made a request for SMA, essentially seeking compensation for various costs associated with having to maintain two residences, one for himself in Turkey (for which he was reimbursed) and one for his wife, who remained behind. The AF turned down the request, citing among reasons for denial the fact that the authorizing statute, 5 U.S.C. § 5924(3) (2006), gave the AF discretion regarding granting of an SMA, and the agency, in denying the claim, properly exercised its discretion. Mr. Edgar appealed that denial to this Board.

Discussion

In defending this matter, the AF essentially asserted a defense based on the allowance at issue being discretionary. It did not raise a defense of lack of Board jurisdiction. Nevertheless, we can only exercise jurisdiction in those cases where resolution of the matter is permitted by statute. Under 31 U.S.C. § 3702(a)(3), the Administrator of General Services is authorized to settle claims involving expenses incurred by federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station. In turn, the Administrator has delegated authority to this Board to resolve such matters. Under section 3702(a)(4), the statute authorizes the Director of the Office of Personnel Management (OPM) to settle claims involving federal civilian employees' compensation and leave. For reasons set out below, we find that do not have jurisdiction over the dispute presented by Mr. Edgar; rather, jurisdiction over the matter lies with OPM.

In *Donald E. Guenther*, GSBCA 14032-RELO, 97-1 BCA ¶ 28,795, our predecessor board in considering these matters first addressed the issue of its jurisdiction as to matters relating to an allowance which is similar to the SMA sought by Mr. Edgar. While *Guenther* dealt specifically with a dispute over a living quarters allowance (LQA), the same reasoning is applicable to claims for an SMA.

In setting out the basis for finding a lack of jurisdiction in *Guenther*, the board reviewed the legislative history which led to the board having jurisdiction over expenses incurred by federal civilian employees for official travel and transportation, and for relocation incidental to transfers. It then added that while the identified matters were ultimately assigned to the board, claims involving compensation and leave were assigned to OPM. The board then provided the following road map, which sets out the basis for determining what matters fall under the Board jurisdiction and which fall under the auspices of OPM. The board stated:

After reviewing the material in detail, we conclude that LQA is not an expense of travel, transportation, or relocation; since it is an allowance, which accrues to an employee after he has traveled to a place and relocated there, it is more properly viewed as a species of compensation. This distinction is drawn in title 5 of the United States Code, Government Organization and Employees; the law regarding travel, transportation, and relocation expenses is contained in chapter 57, "Travel, Transportation, and Subsistence," whereas the law regarding LQA is contained in chapter 59, "Allowances."

In the matter brought to us here by Mr. Edgar, we are clearly dealing with an allowance under chapter 59 and not a matter addressed in chapter 57. Accordingly, as our predecessor previously stated in *Guenther*, matters arising under that chapter (chapter 59) are not subject to Board jurisdiction and instead fall within the ambit of OPM. Accordingly, we transfer the matter to OPM for resolution.

HOWARD A. POLLACK
Board Judge